

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO.,       )  
LTD.,                               )  
                                      )  
                          Plaintiff,       ) C.A. No. 21-1015-JLH  
                                      )  
v.                                        )  
                                      )  
SAREPTA THERAPEUTICS,       )  
INC.,                               )  
                                      )  
                          Defendant.       )

Thursday, May 9, 2024  
10:00 a.m.  
Teleconference

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL  
United States District Court Judge

APPEARANCES:

MORGAN LEWIS & BOCKIUS, LLP  
BY: AMY M. DUDASH, ESQ.  
BY: AMANDA S. WILLIAMSON, ESQ.  
BY: WAN-SHON LO, ESQ.  
BY: KRISTA VINK VENEGAS, ESQ.  
BY: MICHAEL T. SIKORA, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2 MORRIS, NICHOLS, ARSHT & TUNNELL, LLP  
3 BY: JACK BLUMENFELD, ESQ.

4 -and-

5 LATHAM & WATKINS,  
6 BY: MICHAEL A. MORIN, ESQ.

7 -and-

8 FINNEGAN, HENDERSON, FARABOW,  
9 GARRET & DUNNER, LLP  
BY: WILLIAM B. RAICH, ESQ.  
BY: CHARLES LIPSEY, ESQ.

10 Counsel for the Defendant

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09:59:39 13  
09:59:39 14 THE COURT: Good morning, everyone. This is Jen  
09:59:41 15 Hall. We're here on the phone for a teleconference hearing  
09:59:44 16 in NS versus Sarepta. It's civil action number 21-1015. We  
09:59:53 17 have a court reporter on the line today.

09:59:56 18 Could we have appearances, please, for the NS  
09:59:58 19 parties?

10:00:00 20 MS. DUDASH: Good morning, Your Honor. This is  
10:00:02 21 Amy Dudash from Morgan Lewis for Nippon Shinyaku and NS  
10:00:08 22 Pharma and with me are my colleagues from Morgan Lewis,  
10:00:11 23 Amanda Williamson, Krista Venegas, Shon Lo, Michael Sikora  
10:00:19 24 and Jess Moriatsu.

10:00:20 25 THE COURT: Good morning to all of you. And can

10:00:23 1 I have appearances, please, for the Sarepta parties.

10:00:25 2 MR. BLUMENFELD: Good morning, Your Honor. It's  
10:00:27 3 Jack Blumenfeld from Morris in this case for Sarepta and UWA  
10:00:32 4 and with me here is Mike Morin from Latham and Watkins and  
10:00:36 5 Charles Lipsey and Bill Raich from Finnegan Henderson.

10:00:41 6 THE COURT: Good morning to all of you.

10:00:44 7 So we put out an oral order last night about the  
10:00:49 8 topics that we wanted to discuss today. We do have some  
10:00:52 9 availability to put this case to the jury the week of August  
10:00:59 10 12th if the parties would be prepared to go forward then.

10:01:03 11 I've also spoken with Judge Burke and we could  
10:01:06 12 have him do the jury selection the Friday before August 9th  
10:01:11 13 if the parties consented to that, which would allow me to  
10:01:14 14 give a little more time and to account for some of the  
10:01:18 15 potential delays we might have with the translation issues.  
10:01:23 16 So let me hear first from the NS side about that proposal.

10:01:28 17 MS. DUDASH: Unfortunately, Your Honor, we've  
10:01:31 18 reached out to our witnesses, our experts and our fact  
10:01:34 19 witnesses and they're largely unavailable that week. We  
10:01:39 20 would of course consent to jury selection by Judge Burke at  
10:01:43 21 any time and would appreciate the extra time in our case,  
10:01:46 22 but August 12th does not work for multiple of our expert  
10:01:50 23 witnesses and fact witnesses, so we're not able to move  
10:01:53 24 forward on that date. It would have been enough time  
10:01:56 25 otherwise, it's just the issue with our witnesses.

10:02:00 1 THE COURT: Do you have a sense of what your  
10:02:02 2 availability looks like? For example, the week after I have  
10:02:08 3 some other conferences that I could move to the August 12th  
10:02:12 4 week and we could put you on for August 19th or is this more  
10:02:17 5 an issue of just generally that time in August not working,  
10:02:22 6 which I would understand?

10:02:22 7 MS. DUDASH: August does not work for us.

10:02:24 8 THE COURT: Okay. Okay.

10:02:27 9 MS. DUDASH: Unfortunately. We're trying.

10:02:28 10 THE COURT: No. And I understand too, and I  
10:02:31 11 want to try as well to accommodate as best I can. So what I  
10:02:35 12 can tell you is that for a five-day jury trial right now, if  
10:02:40 13 we don't do August, I'm just looking at my calendar. I  
10:03:10 14 think, let me just touch base with my case manager, it's  
10:03:18 15 possible September 23rd might work. Just stand by for a  
10:03:24 16 minute.

10:03:27 17 MS. DUDASH: Oh. Your Honor, September 23rd  
10:03:31 18 doesn't work for us. We inquired generally. I can give you  
10:03:34 19 three of our dates that we have found preliminarily if that  
10:03:43 20 would be helpful and for you to double-check you are  
10:03:46 21 schedule.

10:03:46 22 THE COURT: That would be absolutely helpful.  
10:03:46 23 Go ahead.

10:03:48 24 MS. DUDASH: So we have full availability on  
10:03:50 25 October 21st, November 4th --

10:03:53 1 THE COURT: That week absolutely will not work,  
10:03:56 2 unfortunately.

10:03:57 3 MS. DUDASH: Okay. November 4th and then all of  
10:04:00 4 December.

10:04:02 5 THE COURT: Okay. So I could put it on for  
10:04:05 6 November 4th. You'd be second in line.

10:04:10 7 MS. DUDASH: Okay.

10:04:10 8 THE COURT: For December, the first week of  
10:04:13 9 December you'd be third in line. The second week of  
10:04:17 10 December you'd be second in line. I could do -- oh, wow --  
10:04:29 11 I could do December 16th.

10:04:32 12 MS. DUDASH: Okay. That works for us. Actually  
10:04:35 13 that's the best date for all of our witnesses.

10:04:38 14 THE COURT: Okay. And we could potentially do a  
10:04:42 15 jury selection the Friday before. It might not be Judge  
10:04:46 16 Burke, but I would would have to double-check with the other  
10:04:48 17 magistrate judges.

10:04:50 18 Let me turn it over to Sarepta. How does  
10:04:52 19 December 16th look for you? And you may not know and that's  
10:04:52 20 okay.

10:04:52 21 MR. MORIN: Your Honor, I don't know for sure  
10:04:55 22 quite yet. We do have one potential issue, which is I'm  
10:04:59 23 lead counsel in Abbott/Dextron, in your courthouse, Your  
10:05:05 24 Honor, in front of Judge Jordan. And that is one of the few  
10:05:08 25 available dates that was already submitted to him for the

10:05:12 1 damages portion of the trial that we just recently had, Your  
10:05:17 2 Honor. And he's of course retiring, I just saw in mid  
10:05:21 3 January, I just saw that this morning.

10:05:23 4 So I would say two things. If you'd allow us to  
10:05:27 5 talk to our witnesses and confirm their availability on that  
10:05:32 6 week of December 16th and if we could do both that and maybe  
10:05:40 7 give a day or two and see if he's got something in that  
10:05:43 8 case, because its already been submitted as one of the few  
10:05:47 9 dates. But if you just give us a little bit of time, Your  
10:05:51 10 Honor, and we'll get back to you as quickly as we can with  
10:05:54 11 an update and we will lock down and confirm with the other  
10:05:58 12 witnesses.

10:05:58 13 I also of a long plane trip to go out of the  
10:06:01 14 country that Sunday and -- on a safari, but other people can  
10:06:09 15 wait for the jury to come back if they take longer, of  
10:06:13 16 course, and they'll be in good hands.

10:06:15 17 THE COURT: Well, that's a reason to I think  
10:06:17 18 potentially do the jury selection that Friday, December  
10:06:19 19 13th, if we can get some help from one of the magistrate  
10:06:25 20 judges.

10:06:25 21 Is there any objection that you know on  
10:06:28 22 Sarepta's side by having Judge Burke or another one of the  
10:06:31 23 magistrate judges select the jury?

10:06:34 24 MR. MORIN: Absolutely not. And I'm  
10:06:40 25 acquaintances or friends with folks who had a recent jury

10:06:44 1 with you and my understanding in that case was one of the  
10:06:47 2 your colleagues helped with the jury selection and they even  
10:06:49 3 instructed the jury, I believe, and showed the video on that  
10:06:52 4 Friday, so they were ready to go with Your Honor, from what  
10:06:52 5 I understand, that Monday and we would be fine with that as  
10:06:55 6 well.

10:06:55 7 THE COURT: Okay. That's fantastic. I do think  
10:06:59 8 it works so much better and that would allow us to get  
10:07:02 9 everybody out of here on December 20th so they could enjoy  
10:07:08 10 their holidays and planned trips.

10:07:09 11 All right. Let's hear -- plan to hear back from  
10:07:12 12 folks on that.

10:07:13 13 And then the other thing I wanted to discuss  
10:07:15 14 with you all was whether, since we may still have some folks  
10:07:20 15 in town, whether we should pick a couple hours next week as  
10:07:25 16 long as everyone's here and do the breach of contract claim.  
10:07:26 17 I'm happy to accommodate that even if it later turns out to  
10:07:32 18 be unnecessary because it is just a couple hours, that would  
10:07:35 19 be fine. And if folks are going to be here in the building,  
10:07:38 20 whether we shouldn't try to get some of the business people  
10:07:42 21 in a room together to talk.

10:07:43 22 So let me hear about both of those proposals  
10:07:47 23 from NS's side.

10:07:50 24 MS. DUDASH: Sure, Your Honor. We appreciate  
10:07:53 25 your hearing the breach of contract claim on Monday. I

10:07:56 1 think the parties, since your order, we are extremely close  
10:08:01 2 to settling. We have an amount that we've agreed to and the  
10:08:06 3 last piece in settling the claim would just be the execution  
10:08:09 4 of a very simple settlement agreement which I sent over to  
10:08:13 5 Mr. Morin this morning. So I think that, you know, provided  
10:08:19 6 we can get that executed over the weekend, we'll be in a  
10:08:23 7 position to dismiss the claim and we won't need the hearing  
10:08:26 8 date. But the hearing date, it's helpful, it keeps everyone  
10:08:29 9 on track and we'll make sure we get this resolved as  
10:08:33 10 speedily as possible.

10:08:34 11 THE COURT: Okay.

10:08:34 12 MS. DUDASH: And then as to settlement, our  
10:08:36 13 people from NS are still here, so, you know, we're happy to  
10:08:42 14 come. Monday would obviously be better for us, given that,  
10:08:46 15 you know, after that date they would be able to go back  
10:08:49 16 home.

10:08:51 17 THE COURT: Outstanding. And do you think --  
10:08:54 18 okay. That makes perfect sense.

10:08:56 19 Let me hear from Sarepta's side.

10:08:59 20 MR. MORIN: Your Honor, we agree it's a simple  
10:09:02 21 dollar payment. We agreed on the amount yesterday. Ms.  
10:09:06 22 Williamson was kind enough to send the draft, but it was at  
10:09:11 23 9:58, so literally after we were on the call with the Court,  
24 so I haven't looked at it yet. But I think you can, in good  
10:09:16 25 faith, and I'll give you the representation, as long as the



terms of that are not unreasonable, the settlement for a dollar amount of that claim, we are going to work that out and there's no reason to leave even -- even for any purposes, to leave a trial or a hearing on the calendar on Monday when it's a lump sum payment to resolve the issue. We'll look at it today. I would take it off calendar. Of course, if it contains onerous terms, which I can't imagine it would, or we can't work it out, I guess come back and do it in the jury trial. My point is that's not going to happen and we're done. We've agreed upon the amount and I would say it's beyond an agreement in principle. And you can enforce the fact that we're paying the amount that we have, I won't say it on the record, to resolve the breach of contract claim with a dismissal. So I don't see any reason to leave it on.

With respect to the parties meeting, Sarepta is ready and able to meet next week. I had a couple of thoughts, if Your Honor will hear from us on how that might be most productive.

THE COURT: Absolutely.

MR. MORIN: So we think a couple of things. We think the litigators and our friends on the other side, excellent lawyers and everyone is fighting away, but we think if there is going to be a meeting next week and our folks will come and we'll bring fulsome decision-making

1 authority who are going to work in good faith to see if we  
2 can resolve something, we think a couple things. Number  
3 one, that it will be important and helpful if we want to  
4 make it the most productive to have a neutral involved,  
5 whether it's one of your colleagues, I know it's very short  
6 notice, or whether it's a respected mediator like Judge  
7 Farnan or something like that, we think it's going to be  
8 important to have a facilitator in the room. That's my  
9 first point.

10 Second point, while we're available any day next  
11 week and our clients are coming all the way from Asia and I  
12 appreciate that time, we were thinking something a little  
13 later in the week might be helpful, because if we use a  
14 neutral, whether it's one of your colleagues or Judge Farnan  
15 or any other mediator, and we're open to whoever Your Honor  
16 might suggest and we can pick anyone good, that we'd want to  
17 get some mediation statements and let that person learn a  
18 little bit about the case at least so they don't come in  
19 completely cold and read some papers. And that will take a  
20 smidgeon of time to identify somebody and of course put the  
21 statements together. We have a massive team here and we can  
22 get the statements together, but also the time for the  
23 mediator to read and absorb the materials. Our view is, I  
24 don't know if it's going to settle, but our view is if we  
25 come in good faith to do it, we should do everything we can

10:11:56 1 to weigh the scales towards making it as productive as  
10:12:00 2 possible and that means, A, a neutral, and B, a little more  
10:12:04 3 time so that neutral could consider the parties' positions  
10:12:08 4 and be a helpful facilitator.

10:12:11 5 THE COURT: So I think what I hear you saying is  
10:12:18 6 you're thinking that is both something that the attorneys  
10:12:21 7 would be involved in, more of a standard mediation rather  
10:12:25 8 than having the business people talking directly?

10:12:28 9 MR. MORIN: I think that would be the most  
10:12:30 10 productive thing. Of course probably a great mediator,  
10:12:35 11 whether it's someone from the bench or a retired judge or  
10:12:39 12 whoever it might be, would probably do some shuttle  
10:12:43 13 diplomacy and it may be helpful to get the principles in the  
10:12:45 14 room without the lawyers a fair amount. But we would be  
10:12:46 15 around to give advice or whatever, but we could stay out of  
10:12:51 16 the way a little bit to the extent possible. What I see it  
10:12:53 17 as a more traditional mediation would be the most  
10:12:58 18 productive. And I know how busy your courthouse is, but if  
10:13:03 19 one of your colleagues could do it, I always feel like  
10:13:04 20 somebody wearing the robe can have a little more influence  
10:13:07 21 on both sides and I include our own client in terms of  
10:13:10 22 trying to facilitate a settlement. We could come -- again,  
10:13:15 23 I can't tell you whether we would work it out, we may not be  
10:13:17 24 able to, but we would come in good faith with every  
10:13:20 25 intention of giving it a try.

10:13:22 1 THE COURT: Let me ask you this. You mentioned  
10:13:26 2 Judge Farnan a couple times. I'm not familiar with what his  
10:13:28 3 calendar looks like these days. Is he sort of available on  
10:13:33 4 call to show up? I wouldn't expect that he would be, but  
10:13:37 5 maybe you know better than I do.

10:13:37 6 MR. MORIN: We don't. We did not want to -- of  
10:13:39 7 course this all happened very quickly, Your Honor. We did  
10:13:42 8 not call over, for example, this morning, because we wanted  
10:13:45 9 to float those ideas by you and our friends on the other  
10:13:49 10 side. He is one example, but certainly we could get off the  
10:13:53 11 call and see. He may have a date because something settled  
10:13:57 12 or didn't go forward or he may not have dates. But he's not  
10:13:58 13 the only game in town. Of course there are a number of your  
10:14:01 14 retired colleagues who are here and there's other mediators.  
10:14:05 15 I will be open minded about whoever it is as long as it's  
10:14:08 16 someone who, you know, is experienced at doing these things,  
10:14:12 17 because it seems like there's no time like the present.  
10:14:16 18 Again, who knows what will happen. It seems like an  
10:14:21 19 opportune time and NS os here from Japan when the issues are  
20 fresh in everybody's mind when some of the issues have been  
10:14:24 21 crystallized a little bit, it seems like an opportunity, so  
10:14:27 22 we just don't want to waste it.

10:14:29 23 THE COURT: Yes. So what I can tell you is  
10:14:31 24 while you've been talking, I might be able to get you some  
10:14:36 25 time with Judge Fallon on Tuesday.

10:14:39 1 So let me turn it back over to NS. A lot has  
10:14:44 2 been said. I know you had a preference for Monday and I  
10:14:46 3 appreciate that, that folks of travel plans and they do want  
10:14:50 4 to get home. What do you think about what counsel has said  
10:14:54 5 so far?

10:14:54 6 MS. DUDASH: We're amenable to Tuesday and to a  
10:14:58 7 meeting. We're not in a position and our client is not in a  
10:15:02 8 position to prepare a full-blown mediation statement, but  
10:15:06 9 we'd be happy to meet and discuss. We do have the pretrial  
10:15:07 10 order that sets out the claims at issue, so I'm sure Judge  
10:15:13 11 Fallon could read that and get up to speed in the case and  
10:15:16 12 we could see if, if those discussions bear fruit and we're  
10:15:21 13 not able -- but we're not able to get a settlement across  
10:15:25 14 the line, we can certainly think about a full-blown  
10:15:29 15 mediation after that point.

10:15:30 16 THE COURT: Okay. I do think -- I mean, you  
10:15:32 17 know, we're so close to trial, everybody does understand the  
10:15:37 18 issues and so I do think it's just -- at this point, you  
10:15:41 19 know, we could get a mediator up to speed, but it's really  
10:15:45 20 up to the parties whether or not they're ready to resolve  
10:15:50 21 their differences.

10:15:52 22 So let me think about what the best way might be  
10:15:55 23 to proceed. Should we reconvene on the phone later today  
10:15:59 24 after the parties have had an opportunity to discuss who  
10:16:03 25 they might like to select as a private mediator with the

10:16:06 1 idea that if that doesn't bear fruit that we could have a  
10:16:09 2 call with Judge Fallon to set a time for next Tuesday?

10:16:16 3 MS. DUDASH: I don't think we'll be able to  
10:16:18 4 schedule the private -- it will take us probably several  
10:16:22 5 days to agree on a mediator between the parties, to be  
10:16:26 6 honest, Your Honor. And then to schedule some of the better  
10:16:29 7 mediators I think will be impossible to get that done before  
10:16:32 8 the end of the week next week, just as a practical matter,  
10:16:36 9 but we are happy to go forward with Judge Fallon if she is  
10:16:41 10 available.

10:16:43 11 MR. MORIN: Your Honor. I didn't mean to  
10:16:47 12 interrupt, Your Honor. Sarepta would be happy to go forward  
10:16:52 13 Tuesday with Judge Fallon and we'd appreciate that.

10:16:58 14 And I might just ask our friends to reconsider a  
10:17:01 15 little bit. Eveyone is here and getting ready for opening  
10:17:03 16 statements and the trial next week, so certainly we're going  
10:17:06 17 to be working around the clock. I think confidential five-  
10:17:09 18 or 10-page statements would be incredibly helpful, I would  
10:17:13 19 think, to Judge Fallon in terms of thinking about her. They  
10:17:14 20 would be confidential and the parties could put in what they  
10:17:19 21 wanted in terms of those and would work in good faith, but  
10:17:22 22 about I think that that background would be more helpful  
10:17:24 23 than a pretrial order that says what time things are going  
10:17:29 24 to be changed and some undisputed facts that don't have any  
10:17:32 25 context. But I leave it to your honor, but that seems

10:17:36 1 strange to me when they have there whole trial -- if we're  
10:17:39 2 going to do this on Tuesday, if their folks are going to  
10:17:42 3 stay here from Japan, if our folks are going to come down  
10:17:43 4 from Boston, which they wouldn't otherwise do, why don't put  
10:17:47 5 our best foot forward to the extent possible and give her  
10:17:50 6 something by Monday noon or something that at least educates  
10:17:53 7 her a little bit.

10:17:55 8 THE COURT: Yep. So at this point I'm going to  
10:17:57 9 extricate myself from these discussions and leave it to her.  
10:18:01 10 I will have a conversation with her and have briefly over  
10:18:07 11 text just now about what's going on and so I'll have a  
10:18:11 12 conversation with her about where I think things stand, but  
10:18:15 13 it will be her decision about what she wants to hear from  
10:18:17 14 the parties. But of course what she wants to hear may  
10:18:22 15 depend on whether she'll be able to get to lengthy  
10:18:25 16 submissions on Monday. But I would encourage the parties to  
10:18:28 17 be as honest as they can and to keep it as short as possible  
10:18:32 18 so she's best able to help you on Tuesday. So I will talk  
10:18:36 19 to her when we hang up and I think you can expect to see an  
10:18:40 20 order from her forthcoming.

10:18:45 21 I'll tell you this, what I'm hearing today is  
10:18:48 22 that we don't need to have a hearing on Monday, but I will  
10:18:51 23 set one, I'm happy to do that, so why don't we just have a  
10:18:56 24 letter from the parties by close of business tomorrow  
10:19:00 25 letting us know and I can put something right on the

10:19:03 1 calendar this weekend. I will be around and in chambers and  
10:19:06 2 we can hear the contract claims. So why don't you let me  
10:19:10 3 know before the end of the day tomorrow. If somebody says,  
10:19:12 4 one or the other side says they want to go forward with the  
10:19:18 5 bench trial on Monday, then that's what we'll do.

10:19:19 6 Does anybody have any questions about how we're  
10:19:22 7 going to proceed?

10:19:23 8 MS. DUDASH: No, Your Honor. Thank you very  
10:19:25 9 much.

10:19:27 10 MR. MORIN: On behalf of Sarepta, no Your Honor.

10:19:35 11 THE COURT: All right. Thanks very much. Bye  
10:19:38 12 bye.

13 (Court adjourned at 10:19 a.m.)

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18 I hereby certify the foregoing is a true and  
19 accurate transcript from my stenographic notes in the  
20 proceedings.

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/s/ Stacy M. Ingram, RPR  
Official Court Reporter  
U.S. District Court